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23 February 1974

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Reports of Criminal Violations to the Department of Justice

OGC REVIEW COMPLETED

1. From time to time information is developed within the Agency indicating the actual or probable violation of criminal statutes. Normally all such information would be turned over to the Department of Justice for investigation and decision as to prosecution. Occasionally, however, the apparent criminal activities are involved in highly classified and complex covert operations. Under these circumstances investigation by an outside agency could not hope for success without revealing to that agency the full scope of the covert operation involved as well as this Agency's authorities and manner of handling the operation. Even then, the investigation could not succeed without the full assistance of all interested branches of this Agency. In addition, if investigation developed a prima-facie case of a criminal violation, in many cases it would be readily apparent that prosecution would be impossible without revealing highly classified matters to public scrutiny.

2. The law is well settled that a criminal prosecution cannot proceed in camera or on production of only part of the information. The Government must be willing to expose its entire information if it desires to prosecute. In those cases involving covert operations, therefore, there appears to be a balancing of interest between the duty to enforce the law which is in the proper jurisdiction of the Department of Justice and the Director's responsibility for protecting intelligence sources and methods. This is further affected by practical considerations.

3. I have recently had two conversations with the Department of Justice, the latter on 16 February being with the Deputy Attorney General, Mr. William F. Rogers. To illustrate the problem I took with me the complete investigation, with conclusions and recommendations, of a case which indicated a variety of violations of the various criminal statutes relating to the handling of official funds.

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This case arose during the review of a highly complex clandestine operation. The information was developed by the Inspection and Review Staff, Deputy Director (Plans), and even in its completed form would be almost unintelligible to a person not thoroughly familiar with the Agency and its operations due to the use of pseudonyms and cover companies and to various circumstances arising out of operational conditions.

4. I pointed out to the Deputy Attorney General that review by my Office indicated that the individual was almost certainly guilty of violations of criminal statutes, but that we had been able to devise no charge under which he could be prosecuted which would not require revelation of highly classified information. Mr. Rogers said that under these circumstances he saw no purpose in referring the matter to the Department of Justice as we were as well or, in the light of the peculiar circumstances, perhaps better equipped to pass on the possibilities for prosecution. Therefore, if we could come to a firm determination in this respect, we should make the record of that determination as clear as possible and retain it in our files.

5. If, however, any information arising out of our investigation revealed the possibility of prosecution, then we would have an obligation to bring the pertinent facts to the attention of the Department of Justice. I agreed that any doubt should be resolved in favor of referring the matter to the Department of Justice. I also pointed out that even in cases where we felt prosecution was impossible, if a shortage of funds were involved we took whatever collection action was feasible and, in spite of the problems arising out of the covert nature of our operations, were frequently successful in recovering the funds, at least in part. I also mentioned that our investigation sometimes indicated possible tax evasion or fraud which did not involve operations, and that we worked with the Internal Revenue Service in such situations.

6. Mr. Rogers asked that we follow through carefully on any such case with any appropriate Government agency. He stated that an understanding on these matters could be reduced to a formal exchange of letters, if it becomes necessary, but that he saw no reason why present practices could not be continued without further documentation. I said it had been my recommendation not to formalize the situation unless the matter were brought to an issue either by passage of legislation and a need for clarification thereof or by discussion on specific cases with the Criminal Division of the Department of Justice.

OGC:LRH:jeb

Orig & lcc - DCI

cc - IG

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cc - Director of Security

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